Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

COMMENTS OF THE ALASKA RURAL COALITION

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Table of Contents

Executive Summary.

The reforms issued in the Federal Communication Commission's ("Commission") *CAF Order* have left rural rate of return carriers, like the Alaska Rural Coalition ("ARC") members, with stranded investments in their networks and no specific, predictable support mechanism available to help maintain them. Extending broadband to underserved and unserved areas, however, will be largely dependent on rural carrier's ability to maintain and upgrade existing networks. The *CAF Order* fails to take into account the unique attributes of the "extreme rural" areas of Alaska and therefore does not address the best measures to extend broadband service to these areas. To meet the goals of the *CAF Order* the ARC members urge the Commission, when making critical implementation decisions, to consider the circumstances and limitations of rural rate of return carriers and ARC members and adopt the proposals presented in these comments.

The ARC members lack access to viable, affordable backhaul options that are necessary to provide broadband services. It is vital that the Commission provide rural carriers, particularly those in Alaska, an effective remedy for excessively expensive backhaul. The Commission should provide a trigger point where the carrier is released from the *CAF Order* requirement to purchase the currently-available backhaul. Alternatively, the Commission could provide a benchmark rate for terrestrial backhaul that is reasonably comparable to middle mile transport in urban areas.

The Commission must not implement the *CAF Order* in ways that threaten the survival of small rate of return carriers. It is crucial that the Commission only deny high cost support to rate of return carriers where an unsubsidized competitor serves an entire market without any implicit or explicit support. Small rural carriers could not survive a regime where competitors can cherry pick the most profitable areas to serve and leave the ETCs with the highest cost areas and an insufficient funding base. This is particularly true in Alaska where areas are unconnected and sparsely populated. This regime would also make it difficult, if not impossible, for ARC members to continue to fulfill their COLR obligations.

The Commission cannot use census blocks to determine areas of 100% overlap in Alaska. Cost models are also inappropriate to determine support in Alaska because they do not capture the geographic challenges of serving Alaska. Any evaluation of competition in Alaska should be left to the RCA. It should also make the specific determination of what is in the public interest for Alaska consumers. The RCA has demonstrated that it the best position to make these evaluations taking into account the unique characteristics of Alaska.

The Commission must not impose any conditions or requirements on high cost support that rate of return carriers cannot meet. Small, rate of return carriers are not able to receive Letters of Credit. Small rate of return carriers will not be able to effectively participate in any auction for Phase II support unless they receive sufficient bidding credits. The Commission must proceed with caution and an understanding that extending broadband to underserved and unserved areas is still largely dependent on the participation and survival of the rural carriers.

The ARC members believe that effectively addressing tribal issues will be critical to growing broadband penetration in rural Alaska. Alaska is designated as tribal lands. All cooperatives and small, privately held companies in Alaska likewise should be determined to be "tribally owned and operated carriers" under the *CAF Order* because they all serve tribal lands, and the cooperatives are owned and operated by the communities that they serve.

It is critical that the Commission recognize the unique issues of Alaska tribal areas. First, for tribally-owned and operated carriers, including ARC members, to attract sufficient capital, their rate of return must remain at 11.25%. Second, separate Mobility Fund II performance obligations must be established for Alaska. Third, at least $50 million of annual tribal funding should be set aside for Alaska. Last, Alaska-specific high cost funding should be available to purchase backhaul as well as to construct middle mile facilities.

The Commission should administer the Remote Area Fund in a way that accounts for remote areas of Alaska to make broadband affordable to consumers living in remote areas of Alaska. Remote Area Fund support will have the most impact if it goes directly to the carriers providing the service in the remote areas. This allows for investment and access to facilities necessary to bring broadband to remote areas. The RCA should determine what areas of Alaska qualify as remote areas. Performance requirements tied to the fund must consider Alaska carrier's lack of access to adequate middle mile facilities. The current threshold of 135 percent of the poverty level used in the Lifeline and Linkup program should also be used as the means test for eligibility to the Remote Areas Fund. Last, the Remote Area Fund should be prioritized to assist careers to meet the broadband goals of the *CAF Order* and should not go another entity that may already receive support.

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COMMENTS OF THE ALASKA RURAL COALITION

Adak Eagle Enterprises LLC

Arctic Slope Telephone Association Cooperative, Inc.

Bettles Telephone, Inc.

Bristol Bay Telephone Cooperative, Inc.

Bush-Tell, Inc.

Circle Telephone & Electric, LLC

Cordova Telephone Cooperative, Inc.

Copper Valley Telephone Cooperative, Inc.

City of Ketchikan, Ketchikan Public Utilities

Matanuska Telephone Association, Inc.

OTZ Telephone Cooperative, Inc.

Interior Telephone Company

Mukluk Telephone Company, Inc.

Alaska Telephone Company

North Country Telephone Inc.

Nushagak Electric and Telephone Company, Inc.

The Summit Telephone and Telegraph Company, Inc.

Yukon Telephone Company, Inc.

I. **Introduction.**

The Alaska Rural Coalition[1] ("ARC") files its Comments in this proceeding pursuant to the *Further Notice of Proposed Rulemaking* issued by the Federal Communications Commission ("Commission") on November 18, 2011.[2] The ARC filed Comments on August 24, 2011 and Reply Comments on September 6, 2011 regarding proposed Alaska-specific universal service reforms. The Federal Communication Commission's ("Commission") November 18, 2011 *Connect America Fund Order* ("CAF Order") put small rural carriers in Alaska and the consumers they serve in a disadvantageous position, even compared to the large Alaska carriers.[3]

The ARC membership consists of essentially all rate of return incumbent rural local exchange carriers ("RLECs") in Alaska,[4] who share unified interests regarding the impacts of further proposed changes in universal service funding for the state. It is essential that the Commission recognize the unique circumstances affecting the ability of the rural incumbent local

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1 The ARC is composed of Adak Eagle Enterprises LLC, Arctic Slope Telephone Association Cooperative, Inc., Bettles Telephone, Inc., Bristol Bay Telephone Cooperative, Inc., Bush-Tell, Inc., Circle Telephone & Electric, LLC, Cordova Telephone Cooperative, Inc., Copper Valley Telephone Cooperative, Inc., City of Ketchikan, Ketchikan Public Utilities, Matanuska Telephone Association, Inc., OTZ Telephone Cooperative, Inc., Interior Telephone Company, Mukluk Telephone Company, Inc., Alaska Telephone Company, North Country Telephone Inc., Nushagak Electric and Telephone Company, Inc., The Summit Telephone and Telegraph Company, Inc., and Yukon Telephone Company, Inc.

2 *See Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for our Future*, Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("*CAF Order*" and "*FNPRM*").

3 Although the ARC carriers will experience almost immediate cuts in support, the large competitive carriers will face no such reduction for at least two years. *See CAF Order* at para. 529. Rural carriers will be doing more with less while attempting to meet the FCC's requirements and compete with fully funded carriers.

4 The other ILECs in the state are the ACS companies, which are all price cap, and United Utilities, Inc., a rural ILEC that is wholly–owned and controlled by GCI.

exchange carriers, all of whom are carriers of last resort ("COLR") in Alaska, to provide customers access to affordable voice and broadband services.[5] Reform measures adopted by the Commission must ensure that any changes in universal service and access charge policies for Alaska also provide support of rural infrastructure to ensure the continued provision of essential services to the most remote locations of Alaska.

The existing rural infrastructure is essential for the provision of all telecommunications services, wireless, wireline and broadband. Reforms that threaten the existence of the RLECs that maintain the rural infrastructure threatens the availability of all telecommunications services in rural Alaska. To completely divorce support from voice obligations fails to capture the existing legacy investment obligations of rural carriers. The ARC agrees that reform measures must promote the goal of providing broadband in areas lacking that service today. RLECs are in a unique position of having last mile networks in place to bring the broadband services to Alaska's rural and "extreme rural" customers, and can only do so if given access to affordable middle mile facilities.[6]

II. Implementation of the Connect America Fund Will Be Critical to the Survival of Rate of Return Carriers.

The ARC provides extensive comment on the issues that pertain to Alaska, but many of the ARC's concerns are common shared among providers of telecommunications services in rural areas. We agree with other rural carriers that the *CAF Order* created a fundamental uncertainty and ultimately placed rural broadband in a disadvantageous position relative to urban

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5 *See* 3 AAC 53.265 (2011). These regulations were part of access charge reform, and were acknowledged by the FCC as a positive step.

6 *See* Rhonda McBride, "FCC Chairman Sees Rural Realities in Southwest Alaska" KTUU TV, *reprinted at* msnbc.com(Aug. 30, 2011), *available at* http://www.ktuu.com/news/ktuu-fcc-chairman-sees-rural-realities-in-southwest-alaska-20110829,0,5023053.story. "[T]here needs to be a new definition of rural for communities that are off the road system. [Senator] Begich says he calls it 'extreme rural.'" *Id.*

environments. Rate of return companies face limits, caps, reductions and phased out support at the same time the Commission imposes expensive broadband obligations. The *CAF Order* left rural carriers, including ARC members, with significant stranded investment in networks that may or may not be supported.

Specific and consistent funding remains at the core of universal service, regardless of the service under consideration.[7] In the wake of the *CAF Order*, virtually nothing about high cost support is specific or predictable, which impairs all rural carriers' ability to make informed decisions about maintaining existing networks or investment in upgrading networks. The implementation of the *CAF Order* will determine the actual impact upon individual carriers and the entire rural sector of the industry. We implore the Commission to proceed with caution and with an understanding that extending broadband to underserved and unserved areas is an expensive proposition that will be largely dependent on the survival of rural carriers.

A. Access to Affordable Middle Mile is Critical to Extend Broadband into Remote Areas of Alaska.

The *FNPRM* seeks comment on the benefits and costs of providing support for "middle mile" facilities and access to the Internet backbone.[8] Lack of access to affordable middle mile facilities represents a significant barrier facing ARC members, making it more difficult or in many cases impossible to provide broadband services throughout our service areas.[9] The *CAF*

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[7] *See* 47 U.S.C. § 254(b).

[8] *See FNPRM* at para. 1035.

[9] *See FNPRM* at para. 1035. *See also Comments of the Alaska Rural Coalition, In re Connect America Fund,* WC Docket No. 10-90, Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-10, before the FCC (Aug. 24, 2011) and *Reply Comments of the Regulatory Commission of Alaska in re Connect America Fund,* WC Docket No. 10-90, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, WC Docket No. 03-10, (Sept. 6, 2011).

Order recognizes that many areas of Alaska lack the viable backhaul options necessary to provide broadband services.[10]

The cost of deploying a broadband network depends on the portion of the network that is being addressed.[11] Virtually every ARC member's first mile and most second mile infrastructures are capable of providing high speed broadband service, but middle mile networks between that legacy infrastructure and the internet backbone are few and far between in rural Alaska.[12] Satellite is not a sufficient solution. The cost of acquiring a satellite middle mile facility is expensive and unreliable.[13]

In remote Alaska, the new unregulated TERRA-SW Project being constructed with $88 million in BTOP grant and loan funds by United Utilities, Inc. ("UUI"), GCI's wholly-owned subsidiary, has been hailed as delivering broadband to areas of Alaska in desperate need of high speed connection to the internet.[14] The small, rural carriers, all ARC members, who serve the

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[10] *See CAF Order* at para. 101. "Recognizing that satellite backhaul may limit the performance of broadband networks as compared to terrestrial backhaul, we relax the broadband public interest obligation for carriers providing fixed broadband that are compelled to use satellite backhaul facilities." *Id.*

[11] *See FNPRM* at para. 1035.

[12] *See CAF Order* para. 101, n. 158 ("Even if the modest speeds of 4 Mbps down/1 Mbps up are adopted by the FCC as target throughput speeds, substantial construction of terrestrial facilities and expansion of satellite capacity will be needed to create the backhaul capability that will be necessary to deliver broadband at those speeds in Alaska.").

[13] *See CAF Order* at para. 101.

[14] GCI, *TERRA-SW: Project Overview* (Jan. 12, 2012), http://terra.gci.com/project-overview ("TERRA-SW is a historic investment that will provide the first ever high speed fiber optic and microwave connection to Southwest Alaska. The project will extend terrestrial broadband services to 65 communities and 9000+ households in the Bristol Bay and Yukon Kuskokwim Delta regions."). *See also* "GCI to Connect Southwest with Broadband," Alaska Journal of Commerce, Jan. 15, 2012. ("At 10 a.m. Jan. 12, the first video teleconference served as a virtual ribbon cutting between Gov. Sean Parnell and Yukon Kuskokwim Health Corp. President and CEO Gene Peltola utilizing the new interface between the existing DeltaNet in Bethel and Terra-SW.").

areas adjacent to the TERRA-SW Project have attempted to purchase access to the terrestrial backhaul.[15] Only two carriers out of the four who requested a quote actually received one. The price provided by UUI/GCI far exceeded the cost of purchasing satellite backhaul, which is an already cost prohibitive solution to providing broadband to remote Alaska.[16] These companies are poised to engage UUI/GCI in a formal negotiation of the price and conditions of access to the TERRA-SW Project, but UUI/GCI's position seems to be that it can charge any rate it sees fit.[17]

To deploy the broadband services required under the *CAF Order*, ARC members not only need *access* to middle mile facilities, but *affordable access*.[18] The *CAF Order* requires, however, that where terrestrial backhaul networks exist, a CAF recipient must purchase access to them regardless of the price.[19] This is not economically feasible when the cost of the middle mile prohibits carriers from offering viable broadband service to customers. To require small companies to purchase terrestrial backhaul, *regardless of cost*, defies reason and creates a potential windfall for the owner of terrestrial backhaul.

In states like Alaska, where access to middle mile facilities is limited, the issue of supply and demand also plays a role in the pricing of terrestrial backhaul. Even the TERRA-SW Project

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15 The quotes provided by UUI are stamped confidential and the relevant parties have not had a chance to discuss the issue, so the ARC is not attaching the quotes at this time, but will produce them to the Commission upon request.

16 Even with a 100% take rate in the Bristol Bay service area, the estimated cost per subscriber would exceed $1,000 per DSL line per month just for middle mile transport.

17 *See* Letter from John Nakahata to Shannon Heim, (January 11, 2011), attached as Exhibit 1. The cost of backhaul will exceed their recovery for high cost support, particularly when the other costs of maintaining a telecommunications network are factored in, making any possible broadband deployment unviable.

18 *See, e.g.,* Kim Severson, *Digital Age is Slow To Arrive in Rural America,* N.Y. Times, February 17, 2011, *available at* http://www.nytimes.com/2011/02/18/us/18broadband.html?_r=1&pagewanted=all.

19 *See CAF Order* at para. 101, n. 162.

could potentially have capacity issues. The higher the demand for needed capacity, the more expensive the service will become, unless it is subject to a reasonable benchmark.[20] As demonstrated, the Commission's current position that the cost of terrestrial backhaul can never factor into a carrier's ability to meet the broadband benchmarks is at odds with the basic business realities that the ARC members face because of the lack of access to middle mile facilities.

The only remedy that the *CAF Order* currently makes available to address this issue is a possible waiver from the FCC. A waiver remedy is insufficient to address such a significant issue. The administrative and financial burden of demonstrating that a company will be unable to provide voice service because of the cost of terrestrial backhaul will create an unsustainable business model and may consume all the available support for the network. This places RLECs in an even more precarious position. This so-called "remedy" is as painful to the carrier as the problem.

Rural carriers, particularly in Alaska, need an effective remedy for excessively expensive terrestrial backhaul. The ARC notes that GCI argues that TERRA-SW is a completely non-regulated project, which would leave no regulatory oversight or requirements for pricing or non-discriminatory access. The ARC submits that the Commission could provide a trigger point when the ratio of terrestrial backhaul cost to overall carrier expenses or revenue becomes cost prohibitive. At that benchmark, the carrier is released from the requirement. This option would work like a prospective waiver, subject to a reporting requirement giving the Commission an

[20] *See GCI's Comments Regarding the FCC's Notice of Proposed Rulemaking in the matter of Investigation into the Impact on Alaska Consumers and Carriers of Universal Service Reform by the Federal Communications Commission*, R-10-03, before the Regulatory Commission of Alaska (Dec. 30, 2011) at 8 ("In rural Alaska, the most significant barrier to higher speed broadband services of any type - wireline or wireless - is the lack of sufficient broadband middle-mile that has the capability to expand with demand. Satellite capacity is limited and will not grow cost-effectively as demand expands.").

opportunity to investigate if warranted. Alternatively, the Commission could provide a benchmark rate for terrestrial backhaul similar to the urban floor for local rates.[21] If the Commission required terrestrial backhaul to be priced at a fair and nondiscriminatory price in light of the requirement to purchase it, carriers would know that they could afford access and it would improve the penetration rates of broadband in rural areas. The ARC recommends a benchmark for pricing that is reasonably comparable to middle mile transport in urban areas, basically implementing a geographic rate averaging policy for middle mile. Wholesale prices for terrestrial backhaul should approximate backhaul in urban areas, plus a set percentage to account for higher cost. Without adequate price support, the Commission's requirement that carriers purchase terrestrial backhaul will cause significant distress in rural areas of Alaska.

B. Denying Support to Rate of Return Carriers in Areas of Overlap Will Create A Disruptive Patchwork of Service.

The Commission seeks comment on whether it should adopt a rule that rate of return carriers are not required to provide service to any location in their study area already served by an unsubsidized competitor and also be ineligible for support in those areas of overlap.[22] First, this proposal appears fraught with administrative and practical problems. How would a sub-section of a study area be determined? Would the ability to serve by an unsubsidized competitor be good enough to preclude the ETC from receiving support? How will subsidization be calculated?[23]

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[21] *See CAF Order* at para. 133. Although the price issue is different (local rates too low versus terrestrial backhaul too high), the public policy interest is virtually identical. The use of high cost support should be spent on reasonably priced access to service.

[22] *See FNPRM* at para. 1038.

[23] GCI is the largest receiver of support in Alaska, so calculations of support should include its cable operations.

Second, even if such a rule could be reasonably administered, which the ARC does not believe that it could, to allow an unsubsidized carrier to cherry pick the most profitable locations in a service area, depriving the ETC from revenue from that customer and all customers in the vicinity sets small carriers up for failure.[24] A rural carrier needs to have an adequate revenue base in order to afford access to middle mile facilities.[25] Creating a dynamic where the unsubsidized carrier selects the most profitable areas to serve, but leaves the ETC obligated to continue to provide service where the cost is much higher would likely lead to an insufficient funding base for the ETC. Small carriers simply could not survive in such a scenario.

The ARC understands the Commission's decision that an ETC should not recover support in an area of 100% terrestrial overlap, but that is a rare case in rural America where the cost of providing service to the entire study area is high.[26] The ARC strongly believes the Commission should only preclude ETC funding in those cases where the unsubsidized competitor demonstrates landline facilities and the ability to deliver all services that cover 100% of the residential and business locations in the rate of return carrier's study area. Carving-out a carrier's service area into supported and unsupported markets is an unworkable solution for carriers and will jeopardize service to customers.

The FCC must craft a definition of an unsubsidized carrier. An unsubsidized carrier should be a company that serves an entire market without any support, both implicit and explicit. Currently it appears that the *CAF Order* considers only high cost support in the definition of

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24 *See* Paysha Stockton, *Phone/cable competition plan gains momentum,* The Juneau Empire, Jan. 5, 1999 (including description of GCI's business strategy as "cherry-picking").

25 National Telecommunications Cooperative Association, Comments—NBP Public Notice #19, in the matter of The Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan, GN Docket Nos. 09-47, 09-51, 09-137 (Dec. 7, 2009) at 9.

26 Paysha Stockton, *supra* note 24.

subsidies. However, the ARC believes that any support received through such programs as the Schools and Libraries or Rural Health care funds should also be considered in determining whether a carrier is unsubsidized. Implicit in the definition of a subsidized carrier is its potential receipt of state high cost support. A company may not be receiving federal support but if it is receiving state high cost support it cannot be fairly characterized as unsubsidized.

Alaska's history and geography is unique.[27] If the Commission adopts a rule allowing the actions of an unsubsidized carrier to determine the availability of high cost support, ARC members will face substantial hardship and may be left in the untenable position of serving unconnected, sparsely populated areas. This plan may save the CAF an imperceptible amount of money, but the lack of predictability and sustainability in high cost support will make it very difficult for small, rural companies to meet their financial obligations, let alone deploy broadband into areas that still need the service.[28]

Existing competitors rely on ARC members' network infrastructure to provide their service. It is unreasonable to deny support in areas of overlap where the unsubsidized carriers do not possess fully duplicative terrestrial networks. This would place the whole network infrastructure in jeopardy.

III. Rate of Return in Tribal Areas Should Remain 11.25 Percent.

The Commission seeks comment on whether tribally-owned and operated carriers ought to receive a different rate of return than other small companies.[29] At the outset, ARC members argue that the Commission's definition of "tribally-owned and operated," rather than "serving

[27] *See CAF Order* at para. 101, n. 158-9.

[28] *See* National Telecommunications Cooperative Association, *Wireless and Spectrum Related Challenges*, http://www.ntca.org/images/stories/Documents/Advocacy/PositionPapers/2009/IssueSpectrum.pdf (last visited Jan. 12, 2012).

[29] *See FNPRM* at para. 1059.

tribal communities," doesn't serve the public interest. The designation of Alaska as tribal lands makes this issue relevant to ARC's members because they all serve tribal lands.[30] Many ARC members are cooperatives[31] and are owned and operated by the native residents located in the community they serve.[32] Even small, privately held companies in Alaska should be considered tribally-owned and operated because of their close relationship with the Tribal communities they serve. In contrast, large investor-owned utilities like ACS and GCI should not qualify for the 25% bidding credit, because those companies answer to investors, not the communities they serve.

The availability of capital is a key factor in meeting the enhanced requirements established by the Commission. The *CAF Order* itself represents another challenging factor to securing capital.[33] Small, rural carriers serving remote locations already struggled with access to capital, but the lack of predictability in high cost funding and dramatic changes to a once reliable source of funding has only served to amplify this issue for many carriers.[34] Freezing the rate of

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30 *See CAF Order* at para. 126, n. 197.

31 "A cooperative is a private business organization that is owned and controlled by the people who use its products, supplies or services." http://sfp.ucdavis.edu/cooperatives/whatis.html.

32 Publicly traded companies would not qualify as tribally-owned and operated, although it is unlikely that those companies would be subject to rate of return regulation.

33 *See, e.g.,* Overview of Telecommunications and Broadband Loan and Grant Programs, Rural Utilities Service, U.S. Department of Agriculture, available at http://fjallfoss.fcc.gov/ecfs/document/view?id=7021699801. According to data filed by the RUS at the FCC, caps to the USF fund would make loans that were recently made to small telecom carriers no longer financially feasible.

34 *See* National Telecommunications Cooperative Association, *Wireless and Spectrum Related Challenges,* (last visited Jan. 12, 2012) "[F]orty-nine percent [of rural communications providers] cited limits on their ability to make the necessary investment associated with this line of business." *Id.*

return at 11.25% for small carriers serving tribal areas would inject some needed stability into the market.[35]

IV. Elimination of Support in Areas with an Unsubsidized Competitor Will Create Substantial Hardship for Rural Rate of Return Carriers in Alaska.

The *CAF Order* provided significant leeway to the CETCs in Alaska.[36] The rate of return companies did not fare nearly as well. The *FNPRM* suggests further rule revisions that threaten to impose a permanent state of volatility in the Alaska telecommunications market. The rules proposed in paragraphs 1061-78 would transfer control of high cost support from the rate of return carrier to the unsubsidized competitor. If implemented, this policy would hamper a rate of return company's ability to secure capital for critical network investment and curtail all future investment in the network.[37] Although some money may be saved in the short run, the long term impact on consumers could be disastrous.

A. 100% Overlap Must be Established Before Depriving a Rate of Return Carrier Of Critical CAF Support.

The Commission describes and seeks comment on the appropriate methodology for determining when there is 100% overlap between the rate of return carrier and an unsubsidized competitor.[38] The *FNPRM* proposes using census blocks to determine if a rate of return carrier's

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[35] There is a demonstrated need for rural Alaska telephone companies, particularly the cooperatives owned by member customers, to maintain a higher rate of return. According to U.S. Census Bureau statistics, while Alaska has an overall 2010 poverty rate of 11.0%, ten of the most extremely rural boroughs or areas have poverty rates at 17% and above. For example, the Bethel census area has a poverty rate of 22.6%; the Nome census area is 24.6%; and the Wade Hampton census area is 34.1%. *See* www.census.gov/cvi-bin.saipe/saipe.cgi.

[36] *See CAF Order* at para. 513 (providing CETCs in remote Alaska a two-year delay before the five-year transition to the CAF).

[37] Even to bring middle mile facilities to a small part of the state, GCI required $88,140,762 in federal stimulus loans and grants.

[38] *See FNPRM* at paras. 1063-64.

study area is served by an incumbent carrier.[39] The ARC recommends against adopting this methodology in Alaska due to the sheer size of the census blocks.[40] An Alaskan census block may encompass several study areas which would skew the results of the Commission's analysis.[41] In Alaska, this method would greatly over-estimate the extent to which a unsubsidized competitor serves a study area.[42] If a census block exceeds the bounds of existing networks, this process will result in a nonsensical approach that would require carriers to buy and sell parts of their networks to each other to fit the FCC's model, rather than determining what makes the most sense from an economic and public interest standpoint.

The methodology proposed by the Commission will be ineffective in determining overlap in Alaska. The ARC believes the Commission should delegate the overlap analysis to the Regulatory Commission of Alaska ("RCA"). The RCA is in the best position to realistically evaluate competition and what determinations best serve the public interest. The RCA's expertise in this area was recently demonstrated in its establishment of an Alaska high cost support fund to assist COLRs to provide service.[43] The ARC encourages the Commission to allow the RCA at least 180 days to perform their analysis.[44]

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39 *See FNPRM* at para. 1063.

40 *See CAF Order* at para. 347. "In Alaska, the average census block is more than 50 times the size of the average census block in the other 49 states and the District of Columbia, such that the large size of census areas poses distinctive challenges in identifying unserved communities and providing service." *Id.*

41 As of 2000, Alaska contains the least dense census block in the nation, North Slope Borough, Alaska, which contains 0.002 people per square mile. This compares to the median block group in the nation, which has 2,521.6 people per square mile. *See also CAF Order* at para. 347, n. 587 (comparing the average Alaska census block size of 14.7 square miles with the national average of .28 square miles.).

42 *See FNPRM* at para. 1066.

43 *See* 3 AAC 53.265 (2011).

44 *See FNPRM* at para.1072.

In light of the unreliable methodology for identifying 100% overlap in Alaska, the ARC does not support the Commission's proposal that the Wireline Competition Bureau publish a list of companies, including Alaska companies, for which there is 100% overlap.[45] Even the most urban areas of Alaska, including Anchorage, do not currently have a 100% overlap between ILEC ETC networks and an unsubsidized competitor. Given the delay in elimination of identical support, the only areas of Alaska that will have unsubsidized competitors are Anchorage, Juneau and Fairbanks.[46] The ARC cannot support a proposal that would shift the burden to rate of return carriers and impose an additional regulatory burden on companies already receiving less high cost support.

B. Decreasing Support in Areas of Less than 100% Overlap Disrupts the Predictability of Funding in High Cost Areas.

The Commission seeks comment on whether or not support levels should be adjusted in "areas where there is less than 100% overlap by an unsubsidized facilities-based provider of terrestrial fixed voice and broadband service."[47] The ARC strenuously objects to any decrease of high cost support based on a partial overlap of service. Such an approach would undermine the financial stability of telecommunications in rural areas. Allowing an unsubsidized competitor to cherry pick the most profitable areas of service and thereby deprive an ETC, usually a COLR, of support defies decades of state and federal public policy.[48]

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45 *See FNPRM* at para. 1071.

46 *See CAF Order* at para. 513.

47 *FNPRM* at para. 1073.

48 *See* 47 U.S.C. § 151; Angele A. Gilroy, Congressional Research Service, *Universal Service Fund: Background and Options for Reform* (Aug. 1, 2007) ("The concept that all Americans should be able to afford access to the telecommunications network is commonly called the 'universal service concept.' This concept can trace its origins back to the 1934 Communications Act.").

Universal service requires that support be "specific and predictable."[49] Decreasing support in areas of less than 100% overlap in Alaska disrupts all predictability in short and long term funding.[50] Depriving carriers of funding certainty would make obtaining the financing necessary to fulfill the broadband benchmarks established by the Commission nearly impossible. The *CAF Order* already significantly changed the funding mechanism for high cost areas. Rural rate of return companies have little administrative or financial reserve remaining to accommodate even more drastic changes in funding mechanisms. Ultimately, instability in the market will harm consumers as their telecommunications providers are less able to provide the high level of service they expect, let alone fulfill the additional broadband obligations imposed by the Commission.

Alaska rate of return carriers continue to fulfill COLR obligations throughout their study areas.[51] Their networks were constructed to serve a geographic region, and it is extremely difficult and arbitrary to carve up that network into areas that get support and areas that do not. Limiting high cost support to only the most extreme locations will destroy a carrier's incentive to accept additional COLR obligations.[52] A broad base of high cost support in rural areas is

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[49] 47 U.S.C. § 254(b)(4).

[50] *See generally* Comments of CoBank ACB, filed April 18, 2011. "CoBank urges the Commission to understand that unless there is a sufficient and sustainable cost recovery mechanism, no financing method will sustain a rural broadband network in the long term." *Id.* at 4.

[51] The *CAF Order* acknowledges that rate of return carriers must continue to follow pre-existing state requirements. *See CAF Order* at para. 209.

[52] All Alaska ILECs have open dockets before the Regulatory Commission of Alaska ('RCA") adjudicating their Petitions for Permanent Carrier of Last Resort Status. They have demonstrated a continuing commitment to their COLR obligations even in light of the tremendous uncertainty that the *CAF Order* has created. Without specific and consistent funding, the RCA may face Petitions to withdraw COLR designations. *See e.g.* Docket No. U-11-142, *In re Evaluating Petition for Permanent Carrier of Last Resort Designation for Study Area Served by Matanuska Telephone Association, Inc.* (evaluating whether the interim COLR designation should become

important to providing the necessary funding necessary to deploy and maintain critical network infrastructure.

It defies public policy to impose additional administrative obligations to retain necessary support at the same time the Commission is decreasing critical support of operations expenses.[53] The burden on small, rural companies is already difficult to manage. There is simply no margin or budget for more paperwork. Further loss of high cost support may jeopardize the maintenance of existing network infrastructure.

Cost models are an inappropriate mechanism to determine high cost support for rate of return carriers because they fail to capture the reality of the geographic challenges in Alaska. Therefore, the NCTA recommendation based on cost models must be rejected for Alaska.[54] The data necessary to implement the NCTA recommendation and perform the benchmark calculations on loop costs is unreliable, even where available.

Any decrease in support must comprehensively consider the ramifications of such change in the telecommunications marketplace, the ability of consumers to receive affordable and reliable service, and the ability of sustaining service in the marketplace. Any reduction should also be assessed by the RCA in terms of the impact to the state USF fund, as well as the ability of such a carrier to maintain networks in accordance with COLR responsibilities.

Curtailing support where there is an overlap of service by an unsubsidized competitor creates a significant potential for devastating consequences for rural carriers. Predicating any regulatory relief on a showing that consumers will lose voice service is too stringent a standard

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permanent. MTA, like other Alaska ILECs was the only carrier to Petition for COLR status in its service area.).

53 *See CAF Order* at para. 513, *FNPRM* at para. 1073.

54 *See FNPRM* at para. 1075.

to meet for most small carriers. The impact of further diminishing support will be an impairment of a carrier's ability to provide broadband in the future.[55] Requiring a carrier to demonstrate complete financial failure renders the waiver process useless to most rate of return carriers, and may come too late to prevent a market disruption, as the assets of a company are tied up in bankruptcy court potentially for years in the event a company does fail.

V. Limits on Reimbursable Capital and Operating Costs for Rate of Return Carriers Must Reflect the Reality of Alaska's Extreme High Cost Areas.

The ARC expects financial consultants[56] who specialize in cost models to provide in depth analysis regarding the Commission's proposed limits on reimbursable capital and operating costs for rate of return carriers.[57] The ARC is deeply concerned that the analysis performed to date by the Commission is deeply flawed and will produce inconsistent and unreliable results across rural America. The results may be particularly distorted for the very high cost areas of Alaska. Given the unpredictable results, the ARC supports a one year delay in the application of future capital and operating expense caps.

The *CAF Order* proposes a methodology based on benchmarks for "reasonable costs" to impose limits, but does not differentiate in the benchmark formula the actual cost characteristics within the rural areas that ARC carriers operate.[58] The proposed benchmark is the 90th percentile of cost, "i.e. the amount of cost that ninety percent of similarly situated companies are at or

[55] *See FNPRM* at para. 1077.

[56] *See generally* Comments by GVNW Consulting, Inc. and Moss Adams LLP (joined by many rural companies).

[57] *See FNPRM* at paras. 1079-88 and Appendices C (Explanation of Methodology for Modifications to Corporate Operations Expense Formulae) and H (Modeling Limits on Reimbursable Operating and Capital Costs).

[58] *See FNPRM* at para. 1080.

below when they submit costs for that particular step in the algorithm."[59] The "net effect would be to limit high-cost loop support amounts for rate-of-return carriers to reasonable amounts relative to other carriers with similar characteristics."[60] Companies that are "similarly situated" to ARC members must reflect the same unique circumstances that carriers that serve Alaska must face. A "reasonable amount" is different to a carrier serving rural Alaska areas than a carrier serving customers in Anchorage, let alone to compare carriers serving the lower 48.[61] ARC members provide service in rocky conditions and extreme weather, often in communities accessible only by air.[62]

A waiver solution is not appropriate when the record demonstrates that failing to make a separate benchmark for costs for Alaska carriers will result in Alaska customers losing voice services.[63] Requiring a waiver in each instance for ARC members is inefficient and contrary to

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59 *See FNPRM* at para. 1080.

60 *See CAF Order* at para. 216.

61 Copper Valley Telephone Cooperative's Keystone Canyon fiber project provides anecdotal evidence of the challenges of constructing networks in remote Alaska. To complete a piece of the network, Copper Valley had to bore through about a mile of rock to get through Keystone Canyon. Other stretches required several stream crossings (bored) and road crossings (bored). Production is sometimes measured in feet per day not miles per day. The project was only 15,936 feet and the boring cost alone was $2.1 million.

62 *See* National Telecommunications Cooperative Association, *The State of Broadband Deployment*, http://www.ntca.org/images/stories/Documents/Advocacy/PositionPapers/2009/IssueBroadband.pdf (last visited Jan. 12, 2012) "Substantial challenges typically confront rural providers as they pursue broadband deployment throughout their markets. The typical respondent is 128 miles from their primary Internet backbone connection." *Id.*

63 *See CAF Order* at para. 540. A waiver will be granted when "the petition can demonstrate that the reduction in existing high cost support would put customers at risk of losing voice services, with no alternative to terrestrial providers able to provide voice telephony service to consumers."

section 254's principles of rural access and specific and predictable support mechanisms.[64] The Commission should set an appropriate Alaska benchmark.

VI. <u>Any Recipient of High Cost Support Should be Required to Continue to Provide Voice Service.</u>

The Commission seeks comment on whether the Commission should relax or eliminate ETCs' voice service obligations as their high cost support changes under the *CAF Order*.[65] Relaxing the requirement to provide voice service effectively eliminates COLR obligations in a patchwork fashion.[66] Such decisions are best reserved to the state commissions, which are better equipped to collect and evaluate data on a micro level. The *CAF Order* acknowledges that all incumbents have built out their networks in accordance with COLR obligations without any flexibility to determine service areas.[67] The *CAF Order* does not disturb any state voice COLR obligations.[68]

An unfair distribution of obligation and support may make it difficult for carriers to continue to provide voice services at a rate "reasonably comparable" to urban services.[69] This is especially true in Alaska. In shifting the focus of high cost support from voice service to broadband, the Commission does not need to abandon the fundamental premise of universal service that all Americans should have access to affordable telephone service. In the Alaska rate making process, rate of return carriers reduce their local jurisdiction revenue requirement by the

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[64] *See* 47 U.S.C. § 254(b)(3)-(4).

[65] *See FNPRM* at paras. 1094-95.

[66] The Commission specifically mentions the declining support for ILECs who decline to undertake a state-level service commitment as an example of a carrier whose voice service obligations may be eliminated. This approach seems guaranteed to produce disruption on a state level. *See FNPRM* at para. 1095.

[67] *See CAF Order* at paras. 862, 864.

[68] *See CAF Order* at para. 82.

[69] *See* 47 U.S.C. § 254(b)(3).

amount of high cost loop support received keeping local rates low. Basic math suggests that local revenue requirements, and thus rates, will increase dramatically with the loss of support as a result of the *CAF Order*.

VII. **Imposing Financial Guarantees on Small, Rural Rate of Return Carriers Creates An Impossible Barrier to Service in High Cost Areas in Alaska.**

The Commission seeks comment on several additional measures to "impose greater accountability on recipients of funding."[70] In both the *CAF Order* and *FNPRM* the Commission intends to attach financial consequences to a failure to abide by Commission rules. The Commission's discussion suggests that fraud and waste are rampant in rural areas, a proposition that is not supported by available data.[71] The Commission proposes several mechanisms to ensure that high cost funding is spent on its stated purpose, including a requirement that all carriers receiving high cost support obtain a Letter of Credit ("LOC").[72] The ARC disputes the need for draconian financial guarantees related to high cost support. The ARC believes that the imposition of greater accountability should flow from a historic failure to abide by Commission rules rather than be imposed upon all carriers regardless of circumstances. The proposed rules would impose substantial punishment without any showing of an infraction of the rules.

Requiring carriers that are the size of the ARC members to secure a LOC in order to receive support discriminates against the small rate of return carriers. It is unlikely that a small carrier could obtain an LOC proposed by the Commission, as compared to a larger carrier with

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[70] *See FNPRM* at para. 1103.

[71] *See generally* Comments of CoBank ACB, filed April 18, 2011 (disputing the Commission's proposition that rural rate of return companies deserve onerous financial penalties to curb unsubstantiated allegations of widespread fraud and waste).

[72] *See FNPRM* at para. 1104.

more assets serving densely populated areas.[73] The *CAF Order* itself recognizes that rate of return carriers are small and accordingly require different treatment.[74] Financial institutions are unlikely to provide an LOC to rural Alaskan carriers. Before the Commission adopts such a significant provision, it should at the very least reach out to the major lenders to rural carriers, RUS, CoBank, and RTFC, and receive confirmation that a rural carrier could receive an LOC similar to what the Commission desires, at minimal cost.

Requiring rate of return companies to obtain an LOC potentially discriminates against customers living in the small rate of return carrier's service area. Requiring an LOC prior to funding could completely prohibit carriers that need the support from receiving it.[75] In turn, it would penalize customers in rural areas, which is contrary to the stated public policy principles of the *CAF Order*.[76] This requirement only serves to add to the uncertain regulatory environment surrounding high cost support. The Commission should take actions intended to ensure that customers receive supported services and imposing this requirement would not serve that interest.

VIII. <u>Identifying Geographic Areas Eligible for Support Presents a More Difficult Challenge in Alaska Than The Lower 48.</u>

Under the Commission's Competitive Bidding Proposal, funding would only be available in areas where there is "no private sector business case to provide mobile broadband and high quality voice-grade service."[77] The Commission requests comment on the use of census blocks

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[73] *See generally* Comments of CoBank ACB, filed April 18, 2011.

[74] *See CAF Order* at para. 206.

[75] *See generally* Comments of CoBank ACB, filed April 18, 2011 (arguing that rural rate of return carriers need predictable and sustainable funding).

[76] *See CAF Order* at para. 222.

[77] *See FNPRM* at para. 1123.

as a proxy to identify areas eligible for Phase II support.[78] The ARC disputes the use of census blocks in Alaska as representing a fair or practical proxy to determine where private investment will not construct facilities. A narrower, albeit defined, geographic area would be more appropriate for Alaska.[79]

Relying on census blocks to identify geographic areas eligible for support and for purposes of bidding in Alaska will not produce equal results to the Lower 48.[80] The sheer size of census blocks in Alaska make them virtually useless for this purpose. Unlike other areas of the country, most census blocks in Alaska are very large, may be sparsely populated and may incorporate several study areas.[81]

In Alaska, census blocks have no relation to the service areas of ILECs.[82] Networks have been constructed based on geographic and population considerations, not the arbitrary census block boundaries proposed by the Commission. The ARC believes that where 2G[83] or higher

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78 *See FNPRM* at para. 1124.

79 Given the disparity between telecommunications carriers in Alaska, a bidder defined area would be wholly inappropriate. A pre-existing geographic area, such as ILEC service areas or CMAs represents the fairest approach.

80 *See FNPRM* at paras. 1124, 1126.

81 *See FNPRM* at para. 1126. The Commission's analysis assumes that census blocks can be "quite small." This assumption simply does not apply to Alaska. *See Alaska Borough & Census Area Boundaries—2010*, http://labor.alaska.gov/research/census/2010CNTY.pdf (last visited Jan. 12, 2012).

82 For example, one ARC member, Interior Telephone, serves customers across several census blocks in the Nome area. Form 477 requires census track reporting, a smaller unit of measure, making the analysis of census blocks inconsistent with current reporting obligations.

83 Even in many areas where only 2G is available in Alaska, there is no business case and the existing construction was done with identical support. This was the primary rationale given by GCI, and accepted by the FCC, for delaying the elimination of identical support in Alaska.

service does not exist today in Alaska, there is no private sector business case, absent federal support, for the deployment of the network infrastructure needed to provide the service.[84]

The Commission seeks comment on alternatives to using census blocks to determine areas eligible for support.[85] A bidder-defined approach may work for Alaska, but carriers require enough flexibility to depart from census blocks.[86] The ARC supports the use of cellular market areas ("CMAs") as an alternative for Alaska. CMAs represent a more realistic unit of measure for Alaskan markets. CMAs also reflect a reality that most existing Alaskan carriers function under today.

The ARC supports the Commission's proposal of prioritizing areas without mobile services.[87] Making a bidding credit available to carriers would benefit areas with 2G or less capability.[88] The Commission should consider providing small carriers a bidding credit to even the playing field with the dominant carrier in Alaska. Additionally, because of the unique challenges to deploying mobile service, remote areas of Alaska should be given additional priority treatment.[89]

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84 *See* Kim Severson, *Digital Age is Slow To Arrive in Rural America,* N.Y. Times, February 17, 2011, *available at* http://www.nytimes.com/2011/02/18/us/18broadband.html?_r=1&pagewanted=all.

85 *See FNPRM* at para. 1130.

86 *See FNPRM* at paras. 1129-30. The proposal suggests that census blocks would continue to be the unit of measure for the bid.

87 *See FNPRM* at para. 1132.

88 *See FNPRM* at para. 1132.

89 *See FNPRM* at para. 1132.

IX. The Auction Framework Must Take the Characteristics of Small, Alaskan Companies and Cooperatives Into Account.

The Commission seeks comment on "whether small businesses should be eligible for a bidding preference in a Phase II auction."[90] Awarding a bidding credit to small carriers serving in Alaska is the *only way* to ensure that they could effectively participate in an auction for support.[91] The scope and scale of large companies, like GCI, present an insurmountable advantage against its much smaller competitors.[92] Although the ARC supports extending support to the greatest extent possible, using a benchmark of road miles covered to measure the success of the program as proposed by the Commission would not work for Alaska.[93] In Alaska, there are no roads connecting most locations. Average annual revenue, therefore, would serve as a more accurate and appropriate benchmark for a small business bidding preference in a Phase II auction.

X. Addressing Tribal Issues Will Be Critical to Growing Broadband Penetration in Rural Alaska.

The Commission requests comment on many issues concerning the telecommunications needs of tribal areas.[94] The ARC supports the Commission's establishment of a separate fund to support broadband deployment on tribal lands.[95] The ARC believes that remote Alaska continues to qualify as tribal lands. How high cost support is allocated to these areas will

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90 *See FNPRM* at para. 1157.

91 *See FNPRM* at para. 1157.

92 The largest ARC company, MTA, reported to its member owners $209.6 million in total assets in 2010.

93 *See FNPRM* at para. 1157.

94 *See FNPRM* at paras. 1165-72.

95 *See FNPRM* at para. 1165.

determine how effectively advanced services are deployed. The ARC believes that its members are closer to the tribal communities they serve and are best suited to grow broadband penetration.

A. Separate Performance Obligations for Mobility Fund II Should Be Adopted for Alaska to Account for Its Unique Challenges.

The Commission requests comment on whether performance obligations should be modified given the "extent that providers in Alaska may be dependent on satellite backhaul for middle mile."[96] The ARC believes that the lack of middle mile facilities coupled with the lack of roads and highways support an adapted version of Mobility Fund II to Alaska. Setting expectations that cannot be met will not serve remote communities in need of the additional services that can be provided through Mobility Fund II. The accommodations provided in the *CAF Order* for ETCs who lack access to terrestrial backhaul would be similarly appropriate in this situation.[97]

The Commission also seeks comment on whether carriers lacking access to terrestrial backhaul should somehow provide a backup to satellite backhaul is a proposal that may exceed a rural carrier's resources if extended to broadband. The ARC supports a terrestrial backup for voice services. Satellite service is notoriously unreliable in Alaska for many reasons including inclement weather and geographic limitations based on line of sight.

The Commission requests comment on GCI's proposal that new mobile deployments be given priority in Phase II funding.[98] ARC members could support GCI's proposal, but access to network infrastructure built under this program must be provided on a fair and nondiscriminatory

[96] *See FNPRM* at para. 1168.

[97] *See FNPRM* at para. 1168.

[98] *See FNPRM* at para. 1169.

basis.[99] Infrastructure funded by public money should be considered built for the benefit of all. The ARC has not always found that publicly funded projects are offered at fair and reasonable rates.[100]

The ARC concurs with GCI that priority should be given to areas that do not have access to the National Highway System.[101] We concur that this approach would help account for the many areas of remote Alaska that lack roads and highways.[102] The ARC is concerned, however, that these proposals by GCI appear to have been provided by GCI after the Commission's Sunshine Period began.[103] The degree to which GCI appears to have influenced the discussion after the time for public comment expired, is troubling.

The Commission seeks comment on how to provide priority units to Tribes to allocate where funds are spent.[104] The Commission acknowledges the unique Alaska Native government structure.[105] It would be an onerous administrative burden to require carriers to seek input from each unit of government, but some mechanism should exist to allow input from those affected by

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[99] The GCI Ex Parte cited by the Commission in Footnote 2271 was filed after the sunset period began. The inclusion of proposals that were entertained without opportunity for comment trouble the ARC.

[100] *See* discussion of the TERRA-SW project *supra* at 4-5.

[101] *See FNPRM* at para. 1169.

[102] *See FNPRM* at para. 1169.

[103] *See FNPRM* at n. 2271. The Commission cites the Letter from John T. Nakahata, Counsel to GCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, *et al.*, at 2 (filed Oct. 23, 2011).

[104] *See FNPRM* at para. 1171.

[105] *See FNPRM* at para. 1171.

the funding.[106] The ARC recommends that the Commission offer Alaska Native governments an opportunity to comment, either to the Commission or the RCA, regarding where to target funds.

B. $50 Million of Annual Tribal Funding Should Be Set Aside for Carriers Serving Alaska.

The Commission seeks comment on whether a different approach is warranted for Tribal lands in Alaska given the unique operating conditions. The Commission proposes that carriers serving Alaska would be eligible for the same funding opportunities as carriers serving Tribal lands in the rest of the nation.[107] The ARC supports affording Alaskan companies the same funding opportunities. The core concerns and needs of the population of Tribal areas in the lower 48 and in remote Alaska are sufficiently similar to justify similar treatment.[108]

The Commission also requests comment regarding whether funds should be set aside for Alaska and if so, how much.[109] The ARC strongly supports a set aside for tribal funding for small carriers serving rural Alaska to ensure that there is adequate funding to fulfill the unique needs of the state.[110] Therefore, at least $50 million should be set aside to ensure Alaska has the same funding opportunities as the tribal areas in the lower 48. The ARC would support increasing the total annual tribal funding by the amount of the Alaska set aside to insure all tribal areas receive the support necessary to extend broadband to a historically neglected population.

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[106] We note that the Alaska Native Claims Settlement Act set up 13 regional corporations plus 200 village corporations, which creates a daunting task of coordinating between the parties for soliciting input. *See* 47 U.S.C. §§ 1601-1624.

[107] *See FNPRM* at para. 1172.

[108] *See CAF Order* at para. 508.

[109] *See FNPRM* at para. 1172.

[110] *See FNPRM* at para. 1172.

Alaska lost substantial high cost support in the *CAF Order*.[111] Although ARC members support the funding of broadband services, the lack of funding for legacy investment in existing networks puts many carriers in a precarious financial position.[112] The Commission's record reflects consistent and ardent advocacy that stranding legacy network investment weakens telecommunications services, voice and broadband, in rural areas.[113] "We [GVNW Consulting, Inc.] believe that changing the recovery rules for investments placed into service prior to the effective date of the *Transformation Order* [*CAF Order*] does not comport with the Act and basic rules of administrative procedure."[114] As the Commission ponders support mechanisms for Alaska, the substantial losses already suffered must be taken into account and accounted for if the Commission's goal of ubiquitous broadband is to be achieved.

C. Funds Must Be Made Available to Purchase Access to Backbone, Not Reserved Solely for Construction.

The Commission seeks comment on whether Alaska-specific funding should be focused on middle mile connectivity.[115] The Commission rightly identifies a lack of middle mile facilities as the chief impediment to 3G and 4G services and wireline broadband in remote Alaska. The ARC believes that carriers in Alaska need greater access to middle mile

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[111] Exact figures are unknown and will continue to be unknown until the Commission fully implements its *CAF Order*, but ILECs and CLECs both lost significant support they intended to apply to maintain and develop network infrastructure.

[112] *See generally* Comments of CoBank ACB, filed April 18, 2011.

[113] *See generally* Comments and Reply Comments of the Alaska Rural Coalition, filed Aug. 24, 2011 and Sept. 6, 2011; Reply Comments of the Regulatory Commission of Alaska, filed Sept. 9, 2011; Comments of CoBank ACB, filed April 18, 2011. *See also FNPRM* Comments of GVNW Consulting, Inc., filed Jan. 17, 2012. "We submit that the Commission's propose to adopt regression caps that apply to legacy capital expenditures is unlawful and constitutes retroactive ratemaking." *Id.* at 4.

[114] *FNPRM* Comments of GVNW Consulting, Inc., filed Jan. 17, 2012 at 4.

[115] *See FNPRM* at para. 1172.

infrastructure, but they also need *affordable* access to middle mile facilities. Currently, access to the TERRA-SW Project is more expensive than satellite backhaul, a pricing structure that makes middle mile inaccessible to many Alaskan carriers.[116]

Although construction of backbone facilities is critical to providing more access to broadband, providing high cost support for access to those facilities is equally important for small carriers and their customers. Access to middle mile, where available, will depend on a reliable source of funding to connect customers affordably to the internet backbone.

XI. The Remote Area Fund Will Provide Access to Rural Villages.

The ARC strongly supports the Commission's commitment to making terrestrial broadband affordable to all Americans, even those living in remote areas of Alaska.[117] This commitment echoes the historic public policy position of the Commission regarding traditional voice service.[118] The administration of the Remote Areas Fund will determine whether or not rate of return carriers can fulfill the Commission's commitment to remote Alaska.

A. The Remote Areas Fund Structure Must Take Remote Carriers Into Account.

The Commission seeks comment on whether the Remote Areas Fund should be structured as a portable consumer subsidy.[119] The Commission proposes using the Remote Areas Fund as a mechanism to provide discounted voice and broadband service similar to the Lifeline

[116] *See* discussion, *supra* at 4-5.

[117] *See FNPRM* at para. 1223.

[118] *See* 47 U.S.C. § 254(b)(3). "Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."

[119] *See FNPRM* at para.1225.

and Link Up programs.[120] The ARC is intrigued by the idea of tying Remote Area Funding to individual subscribers, but it is concerned that approach limits the funds available to invest in bringing the service to remote areas. If carriers are applying for funds from the Remote Areas Fund, at a minimum there should be a cost demonstration as to why the support is needed to provide the service to that customer. For example, if a customer is being served by a satellite, the satellite provider should have to show its incremental cost of providing service in comparison to the support it would receive.[121]

ARC members are all ETCs in their service areas. They rely on high cost support to provide reliable telecommunications services. To extend broadband into these remote areas of Alaska will require additional investment in middle mile facilities, and a mechanism for small carriers to pay for access to middle mile facilities once they are constructed. Providing support to remote areas in a piecemeal fashion may not advance telecommunications services as quickly as the Commission intends.

B. Remote Areas Should Be Defined by High Cost Data and Affirmed by the Regulatory Commission of Alaska.

The Commission requests comment on "how to identify the areas eligible for the Remote Areas Fund" while the cost model is unavailable.[122] The *FNPRM* proposes to use census blocks in price cap territories identified by the National Broadband Map data as having no wireline or terrestrial wireless broadband service available as a proxy to identify extremely high cost

[120] *See FNPRM* at para. 1225.

[121] This would resolve the fundamental flaw of identical support: CETCs were not obligated to demonstrate actual costs of service and could rely upon the ILECs costs.

[122] *See FNPRM* at para.1230. Although the Commission intends to use a forward-looking cost model to determine a small number of extremely high cost areas to support with this fund, that model won't be ready in time to use for the early distributions of funds. *See id.* at 1229.

areas.[123] Although this interim approach may work in some areas of the United States, it will not provide accurate or adequate results in Alaska.

Very little of Alaska's remote areas are covered by a price cap company, so using price cap census blocks would not identify the extremely remote, high cost areas of Alaska in need of support.[124] As discussed previously, census blocks are not a workable unit of measure in Alaska given their sheer size and scope.[125] The ARC respectfully suggests that the RCA may be the best arbiter of which areas of Alaska are remote and thus qualify to receive funding under the Remote Areas Fund. The ARC companies have consistently advocated that high cost support should be dependent on a showing of actual costs.

The Commission seeks comment on how often it should revisit the classification of a location as remote.[126] The ARC suggests that annually is the most frequently that the analysis should be revisited, but that using the COLR designation process every five years is an even more reasonable timeframe. Predictability in funding sources is an important tool for small rate of return carriers to ensure that investment will not be stranded by unexpected changes in regulation. The allocation of funds should be split between large awards directed toward construction of facilities necessary to deliver broadband services and ongoing support to purchase access to middle mile facilities, whether terrestrial or satellite.

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[123] *See FNPRM* at para.1230.

[124] ACS is the only price cap company in Alaska and ACS's service footprint is focused on mostly urban areas. *See Welcome to Alaska Communications: About ACS*, http://www.alaskacommunications.com/About-ACS.aspx (last visited Jan. 12, 2012).

[125] *See* discussion of census blocks, *supra notes* 40-41.

[126] *See FNPRM* at para.1231.

C. Performance Requirements Must Be Tailored to Reflect the Realities of Service in Alaska's Remote Areas.

The Commission seeks comment on the appropriate performance requirements in remote areas.[127] The ARC believes that broadband performance requirements must reflect the technical and economic constraints of Alaska's extremely remote areas.[128] The Commission accurately identifies the challenges of providing broadband in remote areas.[129] The lack of terrestrial middle mile facilities through most of Alaska renders most carriers dependent on satellite providers. Unfortunately, providing the speed, latency or capacity required by the Commission for CAF support for satellite service is not yet capable in most areas of Alaska.[130]

D. Providers Qualifying for Funding Through the Remote Areas Fund Should Be Direct Providers of Service in High Cost Areas.

The Commission seeks comment on whether it can or should designate satellite providers as ETCs pursuant to section 214(e)(6).[131] The ARC believes that extending the scope of ETCs to include satellite providers would not serve the public interest and would dilute the impact the Remote Areas Fund could have in the highest cost areas of Alaska. Providing an adequate stream of funding to purchase services would represent sufficient incentive for satellite providers to increase their service offering. Allocating scarce resources to companies with no direct

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[127] *See FNPRM* at para.1240.

[128] *See FNPRM* at para. 1240.

[129] *See FNPRM* at para.1240.

[130] See GCI's Comments Regarding the FCC's Notice of Proposed Rulemaking in the matter of Investigation into the Impact on Alaska Consumers and Carriers of Universal Service Reform by the Federal Communications Commission, R-10-3, before the Regulatory Commission of Alaska (Dec. 30, 2011) at 8 ("Satellite capacity is limited and will not grow cost-effectively as demand expands."). Until satellite's reality catches up with its promise, carriers will be constrained in the service it can provide.

[131] *See FNPRM* at para. 1235.

connection to consumers of telecommunications services would fundamentally change the focus and purpose of universal service.

The Commission seeks comment on whether support under the Remote Areas Fund should be directed only to customers who do not currently purchase broadband service.[132] The ARC acknowledges the simplicity of limiting funding to customers that couldn't otherwise pay for broadband services at current prices, but that approach amounts to a means test that hasn't been applied any where else in the country.[133] Imposing a low income limitation creates substantial challenges going forward. It is quite likely that using a means test would artificially conceal consumer demand for broadband service in Remote Areas. The rules will have to take an improved level of service into account. If the current broadband offering does not meet the broadband benchmark, but after additional investment such an offering is available, will all customers be eligible to support to purchase it, subject to the means test? Additionally, the Commission would have to deal with how this requirement would be monitored and revised going forward if other funding sources, such as the Tribal Mobility Fund, extend service to customers who do not currently have broadband.

The Commission requests comment on an appropriate means test for eligibility to the Remote Areas Fund.[134] Although the Commission proposes using the threshold of 200 percent of the poverty level, the ARC believes using the current threshold of 135 percent of the poverty level used in the Lifeline and Link Up programs provides more consistency.[135] Access to technology represents a critical means to achieving education and employment sufficient to raise

[132] *See FNPRM* at para. 1260.

[133] *See FNPRM* at para. 1260.

[134] *See FNPRM* at para. 1261.

[135] *See FNPRM* at n. 2318.

a family out of poverty.[136] If a family can procure access to a computer or mobile device capable of accessing broadband, the Commission should provide support to make that access affordable.

E. Support for Community Anchor Institutions Should Not Duplicate Existing Funding.

The Commission seeks comment on whether small businesses and/or community anchor institutions also should be eligible for the Remote Areas Fund.[137] High cost support provided to a carrier should be equally applicable to all customers, regardless of size, or face the implementation of a means test.

Where a community anchor institution already receives high cost support, the Remote Areas Fund should not need to provide additional funding. Most schools and libraries in Alaska's extremely high cost areas are already eligible for E-Rate funding from the federal universal service fund.[138] Rural health institutions also receive substantial high cost support. The demands upon the Remote Area Fund require that priorities be set. The ARC believes that funding should be reserved to assist carriers to meet the broadband goals of the *CAF Order* and extend broadband into as many homes as possible.

XII. Conclusion.

Legislators, regulators, carriers and consumers have maintained a commitment to the principles of universal service for nearly a century. The fundamental idea that all Americans deserve equal access to telecommunications services, regardless of geography, has underscored policy decisions, funding initiatives and consumer behavior. The Commission's goal of

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[136] The Urban Institute, *E-Rate and the Digital Divide: A Preliminary Analysis From the Integrated Studies of Educational Technology* (Sept. 21, 2000), *available at* http://www.urban.org/publications/1000000.html.

[137] *See FNPRM* at para. 1263.

[138] *See E-rate State Information: Alaska,* http://www.fundsforlearning.com/stateinfo/AK (last visited Sept. 12, 2012).

explicitly including broadband in the fabric of this policy is to be commended, but the notion that expanding the scope of the policy while potentially slashing funding for the carriers expected to implement it has created substantial uncertainty and volatility in the industry and all of the rural communities served by rate of return companies.

The ARC urges the Commission to apply an even handed approach to the distribution of high cost support in Alaska. Large companies may make a strong case for middle mile construction funding, but that commitment must include access to all Alaskans at a reasonable cost or it fails to live up to the public policy at the heart of universal service and high cost support. At a time that RLECs are trying to reconstruct their business plans to reflect the new reality, they are also stuck with investments in legacy network infrastructure now excluded from high cost support. The Commission must return to the statutory priorities of universal service, sufficient and predictable funding, or accept that its universal service policy leaves a substantial portion of Americans behind the rest of the country.

Respectfully submitted on this 18th day, January, 2012.

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